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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

DISTRICT COUNCIL 16 NORTHERN  
CALIFORNIA HEALTH AND WELFARE  
TRUST FUND, et al.,

Plaintiffs,

v.

SOUTHSIDE FLOORING, INC., a California  
Corporation,

Defendant.

Case No: C11-3578 SC

**DECLARATION OF MURIEL B. KAPLAN  
IN SUPPORT OF REQUEST FOR  
ISSUANCE OF AMENDED WRIT OF  
EXECUTION**

TO THE CLERK OF THE COURT:

I, Muriel B. Kaplan, declare under penalty of perjury that:

1. I am the attorney for the Plaintiffs in the above-entitled action.

2. On August 8, 2011, within ten years past, a Judgment Pursuant to Stipulation (hereinafter “Stipulation”) was entered in favor of Plaintiffs and against Defendant in the amount of **\$80,118.22**, including conditionally waived liquidated damages in the amount of \$12,953.55. A true and accurate copy of the Stipulation is attached hereto as **EXHIBIT A**.

3. On January 20, 2012, a Writ of Execution (“January 2012 Writ”) was issued in this matter in the total amount of \$66,121.31, plus interest. Attached hereto as **EXHIBIT B** and incorporated herein by reference is a true and correct copy of the January 2012 Writ. The January 2012 Writ is being returned, not satisfied, by Plaintiffs concurrently with this filing.

**REQUEST FOR ISSUANCE OF AMENDED WRIT OF EXECUTION**

**Case No.: C11-3578 SC**

1           4.       No levies were served as Defendant belatedly cured the default.

2           5.       Pursuant to ¶ 9 of the Stipulation, Steven Edward Sullivan personally guaranteed  
3 all amounts due and owing under the Stipulation.

4           6.       Pursuant to ¶¶ 6 and 8 of the Stipulation, Defendant is required to remain current in  
5 monthly contributions due to Plaintiffs under the Collective Bargaining Agreement. Failure by  
6 Defendant to remain current in contributions constitutes a default of the Stipulation and all  
7 additional unpaid contributions incurred during the stipulated payment period are to be added to  
8 and become part of the Judgment balance, together with 5% per annum interest and 20%  
9 liquidated damages. Defendant failed to pay June 2012 contributions reported by Defendant as  
10 due, in the amount of **\$25,860.24**, thereby constituting a default of the Stipulation. A true and  
11 accurate copy of the June 2012 contribution report submitted by Defendant [with social security  
12 numbers redacted] is attached hereto as *EXHIBIT C*. Liquidated damages of **\$5,172.05** for the  
13 reported month and interest in the amount of **\$3.54** (through August 1, 2012) are also due and  
14 payable and added as part of the Judgment.

15           7.       Pursuant to ¶ 4(a) of the Stipulation, beginning on July 20, 2011 and continuing on  
16 or before the 20th day of each month until all the obligations under the Stipulation have been paid  
17 in full, Defendant Southside Flooring, Inc., and/or Steven Edward Sullivan individually as  
18 personal guarantor, was to make monthly stipulated payments to Plaintiffs in the amount of  
19 \$4,500.00. Defendant and guarantor have not made these payments due on June 20, 2012 and July  
20 20, 2012. Defendant is therefore in further default of the Stipulation.

21           8.       Defendant has made eleven (11) of the fifteen payments of \$4,500.00 due under the  
22 Stipulation, totaling \$49,500.00, of which \$47,701.19 was principal. Therefore, as of July 2,  
23 2012, the date of Defendant's last payment, \$19,463.48 remains due and owing under the  
24 Stipulation and prior Writ of Execution, together with \$70.14 in interest through August 1, 2012,  
25 all totaling **\$19,533.62**.

26           9.       Pursuant to ¶ 4 of the Stipulation, the conditionally waived liquidated damages of  
27 \$12,953.55 were conditioned upon timely compliance with all of the terms of the Stipulation.  
28 Upon default by Defendant of any of the terms, the **\$12,953.55** is also due and owing.

10. On July 6, 2012, Plaintiffs sent a notice of default to Defendant and its Guarantor, allowing seven (7) days to cure the defaulted stipulated payments. No payment was received.

11. Pursuant to ¶ 11(d) of the Stipulation, Plaintiffs are entitled to all additional attorneys' fees and costs in connection with the collection and allocation of the amounts owed herein. Attorneys' fees through July 25, 2011 are included in the Stipulation. Additional attorneys' fees in the amount of **\$5,059.00**, and costs in the amount of **\$146.66**, were incurred between July 26, 2011 and August 1, 2012, in Plaintiffs' attempts to satisfy Defendant's recent defaults under the Stipulation, and in the preparation of this Writ Request and Writ of Execution.

12. The total amount now due and owing by Defendant to Plaintiffs is as follows:

Stipulation	Balance	\$19,463.48	
	Conditionally Waived LDs	\$12,953.55	
	5% Interest (through 8/1/12)	\$70.14	
			\$32,487.17
October 2011	20% Liquidated Damages	\$1,536.93	
	5% Interest (through 12/2/11)	\$2.11	
			\$1,539.04
November 2011	20% Liquidated Damages	\$1,167.36	
	5% Interest (through 1/20/12)	\$15.99	
			\$1,183.45
December 2011	20% Liquidated Damages	\$1,328.37	
	5% Interest (through 2/6/12)	\$5.46	
			\$1,333.83
March 2012	20% Liquidated Damages	\$1,000.00	
	5% Interest (through 6/4/12)	\$23.97	
			\$1,023.97
April 2012	20% Liquidated Damages	\$2,281.40	
	5% Interest (through 6/11/12)	\$17.19	
			\$2,298.59
May 2012	20% Liquidated Damages	\$40.02	
	5% Interest (through 7/31/12)	\$0.85	
			\$40.87
June 2012	Contributions	\$25,860.24	
	20% Liquidated Damages	\$5,172.05	
	5% Interest (through 8/1/12)	\$3.54	
			\$31,035.83
	<b>SUB-TOTAL:</b>	<b>\$70,942.75</b>	
	<b>Attorneys' Fees (7/26/11 – 8/1/12)</b>		<b>\$5,059.00</b>
	<b>Costs (through 1/19/12)</b>		<b>\$146.66</b>
	<b>TOTAL:</b>	<b>\$76,148.41</b>	

WHEREFORE, it is prayed that an Amended Writ of Execution be promptly issued against Southside Flooring, Inc., and Steven Edward Sullivan individually as personal guarantor, in the

1 amount of **\$76,148.41**, plus 5% per annum interest on the Stipulation balance and contributions  
2 (\$45,323.72 at \$6.21 per diem), and at the legal rate of 0.16% interest per annum (Federal Reserve  
3 Release Date for the week ending August 5, 2011) for post-judgment interest on the other amounts  
4 due (\$30,824.69 at \$0.14 per diem) from August 2, 2012, until satisfied, and that the Court retain  
5 jurisdiction over this matter.

6 To the best of my knowledge and belief, Defendant Southside Flooring, Inc. is a  
7 corporation and therefore not an infant or incompetent person, nor in the military service of the  
8 United States, and Steven Edward Sullivan is not an infant or an incompetent person or in the  
9 military service of the United States.

10 I declare under penalty of perjury that the foregoing is true of my own knowledge and if  
11 called upon I could competently testify thereto.

12 Dated: August 3, 2012

SALTZMAN & JOHNSON  
LAW CORPORATION

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Muriel B. Kaplan  
15 Attorneys for Plaintiffs  
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